



City of Newton, Massachusetts

Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459
617-796-1120

Ruthanne Fuller
Mayor

Barney Heath
Director

PUBLIC HEARING MEMORANDUM

DATE: February 23, 2024

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Katie Whewell, Chief Planner for Current Planning
Joseph Iadonisi, Senior Planner

SUBJECT: **Petition #119-24**, for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a series of retaining walls exceeding four feet in height within the rear setback at 12 Clark St., Ward 6, on land known as Section 62, Block 19, Lot 08, containing approximately 13,600 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3, 5.4.2.B, and 7.8.2.C.2 of the City of Newton Rev Zoning Ord, 2017

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis which may be useful in the special permit decision making process of the City Council. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the City Council will want to consider in its discussion at a subsequent Working Session.



12 Clark St.

I. Project Description

Use -- single family dwelling

Zone – Single-Residence 3 (SR3)

Lot size – 13,600 square feet on a corner lot with frontage on Clark Street and Rowena Road

Existing Nonconformities – none

Proposal -- the petitioners propose to construct a series of retaining walls to the rear of the dwelling.

Analysis

The Planning Department is unconcerned with the petition to add retaining walls exceeding four feet in the rear. The proposed retaining walls are designed to increase usable backyard space and do not affect the grade of the house. The property at 12 Clark St. is a single-family dwelling located on a 13,600 square foot corner lot. The rear setback is 41.3', with a driveway and garage extending about 60' along the rear setback. There is also a slope to the rear of the property, with the property sloping about six feet up in the last approximately 20 feet. Given much of the backyard is taken by the driveway, garage, and slope, the proposed retaining walls will increase the amount of level space in the backyard for the proposed patio and lawn. In keeping with the Engineering Division's standards of review and City's stormwater ordinance, the petitioner must provide drainage analysis before and after construction. The petitioner must provide proper drainage behind the wall and should provide a landscaping plan for the proposed retaining walls in accordance with the Engineering Division's memorandum.

II. Zoning Relief Requested:

| Zoning Relief Required | | |
|------------------------|---|-----------------|
| Ordinance | | Action Required |
| §5.4.2.B | Request to allow a retaining wall exceeding four feet within the rear setback | S.P. per §7.3.3 |

For more details around the zoning analysis please refer to **Attachment A**.

III. Criteria for Consideration per §7.8.2.C.2:

- The site is an appropriate location for the proposed series of retaining walls exceeding four feet in the rear setback. (§7.3.3.C.1)
- The proposed construction of a series of retaining walls exceeding four feet in the rear setback as developed and operated will not adversely affect the neighborhood. (§7.3.3.C.2)
- The proposed construction of a series of retaining walls exceeding four feet in the rear setback will be no nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved

for the proposed construction of a series of retaining walls. (§7.3.3.C.4)

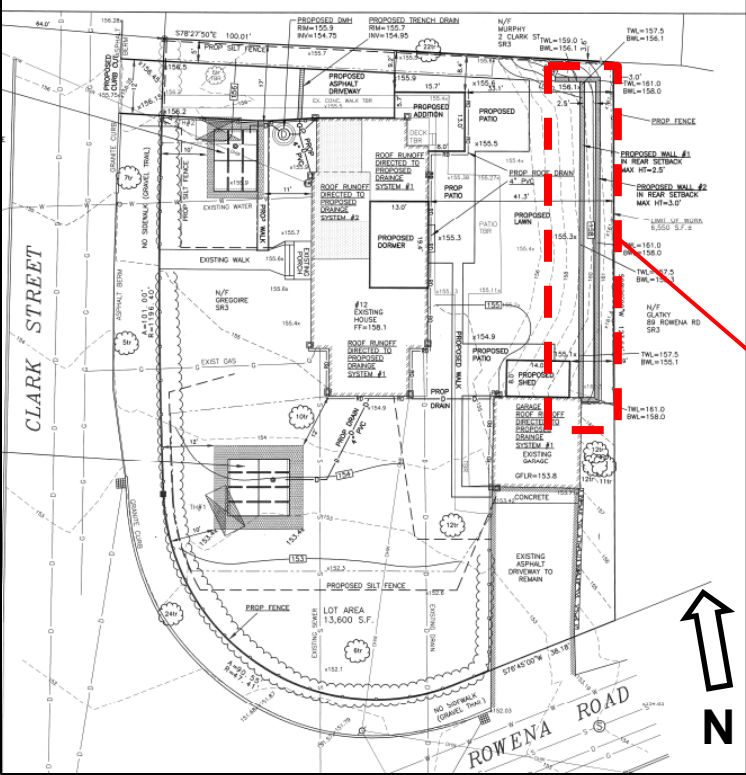
- The proposed construction of a series of retaining walls exceeding four feet in the rear setback is not substantially detrimental to the neighborhood. (§7.8.2.C.2)

IV. Project Proposal and Site Characteristics

The petitioner is proposing two retaining walls to the rear of the dwelling. The height of the first wall is 2.5 feet and the second wall is 3.0 feet, resulting in a cumulative height of 5.5 feet. When a series or terracing of retaining walls exceeds four feet within a setback, a special permit is required. The site has an upwards slope from the rear of the dwelling to the rear property line (opposite Clark Street) of approximately six feet. The proposed series of walls will allow for the construction of a rear addition, a shed, patio space, and a level rear yard.

The petitioner is also proposing work to the dwelling and site that is considered as of right meaning were it not for the retaining walls, the petitioner would be able to apply for a building permit for this work. Additions to the dwelling consist of a rear addition and a dormer on the rear elevation. The petitioner is also planning to construct a shed behind an existing garage as well as a second driveway from Clark Street.

Site Plan



Proposed series of retaining walls

I. Interdepartmental Review

The Associate City Engineer, John Daghlian, conducted a review and issued a memorandum (Attachment B) on behalf of the Engineering Division of Public Works. This memorandum requires that the petitioners provide drainage analysis before and after construction and provide proper drainage behind the wall. The petitioners also should provide a landscaping plan for the proposed retaining walls in accordance with the Engineering Division’s memorandum prior to the issuance of a building permit.

II. Petitioner’s Responsibilities

The petition is complete.

ATTACHMENTS:

- ATTACHMENT A:** Zoning Review Memorandum
ATTACHMENT B: Engineering Memorandum
ATTACHMENT C: DRAFT Council Order



Ruthanne Fuller
Mayor

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: January 23, 2024

To: Anthony Ciccariello, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Katie Whewell, Chief Planner for Current Planning

Cc: Gregoire Versmee, Applicant
Barney S. Heath, Director of Planning and Development
Jonah Temple, Deputy City Solicitor

RE: Request to allow a retaining wall exceeding four feet in height in a setback

| Applicant: Gregoire Versmee | |
|--|-------------------------------------|
| Site: 12 Clark Street | SBL: 62019 0008 |
| Zoning: SR3 | Lot Area: 13,600 square feet |
| Current use: Single-family dwelling | Proposed use: No change |

BACKGROUND:

The property at 12 Clark Street consists of a 13,600 square foot lot at the corner of Clark Street and Rowena Road. The site improved with a single-family residence constructed circa 1925 and a detached two-car garage. A series of retaining walls are proposed which exceed four feet in height within the rear setback, requiring a special permit.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared Gregoire Versmee, applicant, dated 12/20/2023
- Site Plan of Land, signed and stamped by Bruce Bradford, surveyor, and Michael S. Kosmo, engineer, dated 11/30/2023

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner proposes to construct a series of retaining walls at the rear of the property within the required 15-foot rear yard setback, reaching a maximum cumulative height of 5.5 feet. Per section 5.4.2.B, a special permit is required for retaining walls exceeding four feet within a setback.

See "Zoning Relief Summary" below:

| Zoning Relief Required | | |
|-------------------------------|---|------------------------|
| <i>Ordinance</i> | | <i>Action Required</i> |
| §5.4.2.B | Request to allow a retaining wall exceeding four feet within the rear setback | S.P. per §7.3.3 |

CITY OF NEWTON
Department of Public Works
ENGINEERING DIVISION

MEMORANDUM

To: Council Andrea Kelly, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – 12 Clark Street

Date: February 12, 2024

CC: Lou Taverna, PE City Engineer
Barney Heath, Director of Planning
Jennifer Caira, Deputy Director
Katie Whewell, Chief Planner
Alyssa Sandoval, Deputy Chief Planner

In reference to the above site, I have the following comments for a plan entitled:

Site plan of land in Newton, MA
12 Clark Street
Prepared by: Everett M. Brooks Company
Dated: November 30, 2023

Executive Summary:

The proposed permit entails the construction of two retaining walls near the eastern property line. The existing site is developed with a single-family home and proposed additions are planned to the dwelling. The plans submitted do not have any details for the two proposed walls that will be terraced. The first wall closest to the property line will be offset between 3' - 3'-6" and having a height of 3 feet. The second wall will be offset (scaled from the plan) approximately 6'-11" from the property line or 2.5' from the first wall having a wall height of 2.5'.

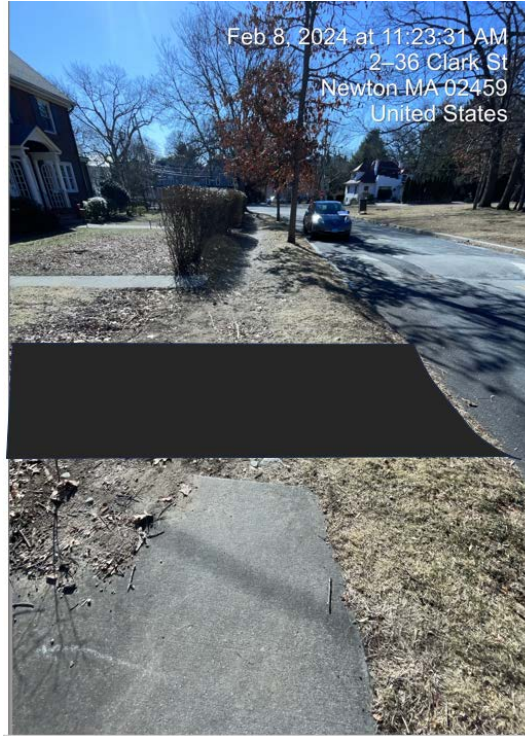
The walls will extend from the back corner of the existing garage and run approximately 72' in a northly direction and turn 90 degree and extend approximately 9'-11" parallel to #2 Clark Street property line. All retaining walls need proper drainage behind the wall to ensure stability of the wall to prevent tipping, turning and or sliding of the wall. Retaining walls are considered

structures therefore will need ISD review and approval. The following should help visualize the proposed walls; the cross-section A-A was taken at the midpoint of the wall in an east-west orientation.



A landscape plan should be developed for the proposed walls. ISD may require a safety fence along the length of the 3-foot-high wall.

The engineer of record has shown drainage improvements for the new proposed impervious surfaces (driveway & roof area), however; no calculations were provided at the time of review. A standard driveway apron will be required for the proposed driveway off Clark Street.



Proposed driveway apron

Drainage:

1. A Pre & Post Construction drainage analysis is required. All stormwater runoff from the site shall be captured on-site and infiltrated in accordance with the Massachusetts Department of Environmental Protection standards and the City of Newton Department of Public Works policy. This policy states that stormwater runoff shall be retained from the 100-year storm event of 8.78-inches over a 24-hour period and shall be infiltrated to the maximum practicable extent. Pre & Post watershed maps (at a proper scale that is legible) are required that delineate control points and limits of the sub-basins. On-site soil evaluation is required to determine the seasonal high groundwater elevation, soil types and to identify any and all unsuitable soils (such as ledge, clay, peat, fill and others). On site soil testing that will include test pit(s) within 25 -feet of each proposed system and percolation test(s) must be schedule and witnessed by a representative of the Engineering Division. Soil logs shall be submitted on the site plan or drainage report and shall be certified by a Massachusetts Licensed Soil Evaluator and/or Professional Civil Engineer.

2. An Operations and Maintenance (O&M) plan for the long-term maintenance of the proposed stormwater management facilities needs to be drafted and submitted for review. Once approved the O&M must be adopted by the applicant/property owner, incorporated into the deeds; and recorded at the Middlesex Registry of Deeds. A copy of the recording instrument shall be submitted to the Engineering Division.
3. Annual inspection logs shall be submitted to the DPW Engineering Division as required to maintain certification of compliance under Newton's NPDES MS4 Permit.
4. It is imperative to note that the ownership, operation, and maintenance of the proposed drainage system and all appurtenances including but not limited to the drywells, catch basins, trench drains, and pipe(s) are the sole responsibility of the property owner(s).

Sanitary Sewer & Domestic Water Service(s):

- ISD will determine if more than 50% of the dwelling is gutted or renovated, if so then new water & sewer service shall be required. The city records indicate that the water service was installed in 1926.

General:

1. 5 Year Moratorium – if at time of construction the roadway is under a 5-year moratorium, the roadway must be milled and paved gutter-to-gutter for a distance of 25 feet in each direction from the outermost trenches.
2. All trench excavation shall comply with Massachusetts General Law Chapter 82A, Trench Excavation Safety Requirements, and OSHA Standards to protect the general public from unauthorized access to unattended trenches or excavations. Trench Excavation Permit is required prior to any construction. This applies to all trenches on public and private property. *This note shall be incorporated onto the final plans.*
3. All tree removal shall comply with the City's Tree Ordinance.
4. The contractor of record is responsible for contacting the Engineering Division and scheduling an appointment 48-hours prior to the date when the utilities will be made available for an inspection of water services, sewer services and drainage system installation. The utility in question shall be fully exposed for the Inspector to view, backfilling shall only take place when the City Engineer's Inspector has given their approval. *This note shall be incorporated onto the final plans.*

5. The applicant shall apply for a Building Permit with the Inspectional Services Department prior to ANY construction.
6. Before requesting a Certificate of Occupancy, an As Built plan shall be submitted to the Engineering Division in both digital and paper format. The plan shall show all utilities and final grades, any easements and improvements and limits of restoration. The plan shall include profiles of the various new utilities including but not limited to rim & invert elevations (City of Newton Datum), slopes of pipes, pipe materials, and swing ties from permanent building corners. The as built shall be stamped by both a Massachusetts Registered Professional Engineer and Registered Professional Land Surveyor. Once the As built plan is received the Engineering Division shall perform a final site inspection and then make a determination to issue a Certificate of Occupancy. *This note shall be incorporated onto the final plans.*
7. All site work including trench restoration, sidewalk, curb, apron, and loam border (where applicable) shall be completed before a Certificate of Occupancy is issued. *This note shall be incorporated onto the final plans.*
8. The contractor of record shall contact the Newton Police Department 48-hours in advanced and arrange for Police Detail to help residents and commuters navigate around the construction zone.
9. If any changes from the final approved design plan that are required due to unforeseen site conditions, the contractor of record shall contact the design engineer of record and submit revised design and stamped full scale plans for review and approval prior to continuing with construction.
10. *The engineer of record shall add the following attestation to the plans when applying for a building permit:*

I certify that the construction so shown was inspected prior to backfill and that all work conforms with the Approved Plan and meets or exceeds the City of Newton Construction Standards.

Signature

Note: If the plans are updated it is the responsibility of the applicant to provide all City Departments [ISD, Conservation Commission, Planning and Engineering] involved in the permitting and approval process with complete and consistent plans.

If you have any questions or concerns, please feel free to contact me at 617-796-1023.

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the City Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to allow a series of retaining walls exceeding four feet in height in the rear setback as recommended by the Land Use Committee for the reasons given by the Committee, through its Chair, Councilor Andrea Kelley:

1. The site is an appropriate location for the proposed series of retaining walls exceeding four feet in the rear setback given, given the walls are placed where there is a six foot grade change to the rear of the dwelling. The site is also subject to two front setbacks, limiting the space available for a rear yard due to the placement of the dwelling on the lot. (§7.3.3.C.1)
2. The proposed construction of a series of retaining walls as developed and operated will not adversely affect the neighborhood, given the retaining walls are to the rear of the property with limited visibility from the street. (§7.3.3.C.2)
3. The proposed construction of a series of retaining walls will be no nuisance or serious hazard to vehicles or pedestrians as they do not affect site parking or circulation. (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved for the proposed construction of a series of retaining walls. (§7.3.3.C.4)

PETITION NUMBER: #119-24

PETITIONER: Gregoire Versmee

LOCATION: 12 Clark St., Ward 2, Newton Centre, on land known as Section 62 Block 19 Lot 08, containing approximately 13,600 sq. ft. of land

OWNER: Gregoire Versmee

ADDRESS OF OWNER: 12 Clark St.
Newton Centre, MA 02459

TO BE USED FOR: Single-family dwelling

RELIEF GRANTED: Special Permit per §5.4.2.B to construct a series of retaining walls in the rear setback exceeding four feet

ZONING: Single Residence 3

Approved, subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping, and other site features associated with this special permit/site plan approval shall be located and constructed consistent with:
 - a. Plot Plan stamped and dated by Bruce Bradford, Professional Land Surveyor, dated November 30, 2023.
 - b. Architectural plan signed, stamped, and dated by Bond W. Worthington, Registered Architect dated September 5, 2023 consisting of the following sheets:
 - i. Proposed elevations (showing front and left), page 8 of 12
 - ii. Proposed elevations (showing rear and right), page 9 of 12
2. No building permit (other than a demolition permit) and unless otherwise specified shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:
 - a. Recorded a certified copy of this Special Permit/Site Plan Approval at the Middlesex South Registry of Deeds and filed proof of such recording with the City Clerk and submitted a copy with the building permit application.
 - b. Obtained a written statement/sign off from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1 including all dimensional requirements.

3. No certificate of occupancy (temporary or final) shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with for the portion of the project for which occupancy is requested and the Petitioner has:
 - a. Filed with the building permit record statements by a registered architect (or professional engineer) and a professional land surveyor (or professional engineer) certifying compliance with Condition #1.
 - b. Submitted final as-built survey plans in digital format, stamped, and signed by a professional land surveyor or professional engineer, as applicable.
 - c. Obtained approval from the City Engineer certifying that all engineering details for the portion of the Project for which a certificate of occupancy is requested have been constructed to standards of the City of Newton Public Works Department.